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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF OHIO
5 EASTERN DIVISION
6 - - - -

7 SARAH ARONSON, M.D.,)
8 Plaintiff,)
9))
10 v.) CASE NO. 1:10-CV-00372
11) JUDGE BOYKO
12 UNIVERSITY HOSPITALS OF)
13 CLEVELAND,)
14 Defendant.)

15 - - - -
16 DEPOSITION OF MATTHEW NORCIA, M.D.
17 Wednesday, December 29, 2010
18 - - - -

19 The deposition of MATTHEW NORCIA, M.D., a Witness
20 herein, taken by the Plaintiff as if upon examination under
21 the Ohio Rules of Civil Procedure, before me, Mary C. Peck,
22 a Stenographic Reporter and Notary Public within and for the
23 State of Ohio, at the offices of Gordillo & Gordillo, LLC,
24 1370 Ontario Street, Suite 2000, Cleveland, Ohio, commencing
25 at 9:30 a.m., the day and date above set forth.

1 APPEARANCES:

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18 - - -

19 ALSO PRESENT

20 Sarah Aronson, M.D., via telephone

21

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1 MATTHEW NORCIA, M.D.

2 called by the Plaintiff for the purpose of examination,
3 as provided by the Ohio Rules of Civil Procedure, being by
4 me first duly sworn, as hereinafter certified, deposed and
5 said as follows:

6 - - - -

7 EXAMINATION OF

8 MATTHEW NORCIA, M.D.

9 - - - -

10 BY MR. GORDILLO:

11 Q Good morning.

12 A Good morning.

13 Q Would you please state your full name for the record?

14 A Matthew Patrick Norcia.

15 Q And as we proceed with our deposition today, how
16 would you like to be addressed?

17 A Matthew would be fine.

18 Q Matthew, what is your home address?

19 A 2858 Brainard Road, Pepper Pike 44124.

20 Q Does anybody else live there with you?

21 A My wife and four daughters.

22 Q What's your wife's name?

23 A Susan.

24 Q How old are your daughters?

25 A 21, 19, 17, and 6.

1 Q What are their names?

2 A I'll go from the oldest to the youngest.

3 Q Okay.

4 A Kayla, Lauren, Jenna, Natalie.

5 Q All right. You are currently employed?

6 A Yes, sir.

7 Q Who is your employer?

8 A Case Medical Center, University Hospitals Case
9 Medical Center.

10 Q Do you have a job title there?

11 A I'm Staff Anesthesiologist, I'm the Vice-Chairman of
12 Education in the Department of Anesthesiology and
13 Perioperative Medicine. I'm the Residency Program
14 Director for the Department of Anesthesiology. I'm
15 Executive Medical Director for the Masters of Science
16 in Anesthesiology, and the Chief of Liver Transplant
17 Anesthesiology.

18 Q Do you have any other current employers?

19 A Case Western Reserve University.

20 Q Do you have job titles with Case Western Reserve
21 University?

22 A Executive Director of MSA Program.

23 Q Would you describe for me generally your duties as
24 the program director for the Anesthesiology Residency
25 Program?

1 A As program director, I'm responsible for the
2 recruitment of residents into the program. I'm
3 responsible for maintaining the program according to
4 ACGME requirements. I'm responsible for continuing
5 accreditation of the program. I'm responsible for
6 training and evaluation of the residents.

7 Q Anything else?

8 A On occasion I assist residents in finding employment.

9 Q Anything else?

10 A I think that covers most of it.

11 Q Okay. Will you please explain to me a little bit
12 about the extent to which the standards of the
13 American Board of Anesthesiology are incorporated
14 into the resident's program?

15 A Well, the America Board of Anesthesiology dictates
16 whether or not a resident upon graduation can become
17 a diplomat and receive a certification, so they
18 impose upon residency programs certain guidelines and
19 restrictions in which we have to work so that the
20 residents can graduate and then apply for their Board
21 examinations.

22 Q In the context of recruiting residents, do you
23 participate in the decision to hire the resident?

24 A Yes, I do.

25 Q Okay. And then with respect to Sarah Aronson, did

1 . you participate in her hiring?

2 A Yes, I did.

3 Q And she entered into a contract with Case Medical
4 Center, right? UH Hospitals Case Medical Center?

5 A Correct.

6 Q And did you understand that as part of that contract
7 she was obligating herself to perform certain
8 services in exchange for which she was going to be
9 paid a stipend and certain conditions of employment
10 were going to be provided to her by UH Case Medical
11 Center?

12 A Correct.

13 Q As to your understanding about what was going to be
14 provided to her, did that include a program that
15 would meet the ABA standards?

16 A To the best of my knowledge, yes.

17 Q And I think you said that one of the duties that you
18 had was to evaluate residents, right?

19 A Correct.

20 Q Did that include Sarah Aronson?

21 A Correct.

22 Q Let's talk about that for a moment.

23 Did you evaluate her through her entire residency
24 period?

25 A Yes.

1 Q Okay. And that residency period began when?

2 A March 1, 2006, I believe. I don't know the --

3 Q I don't want you to guess, so if you don't know
4 specifically --

5 A I know it was March 1st. It was either 2006 or 2007.
6 I'm not sure. I think it's pretty well documented.

7 Q I just wanted to see what your recollection was.
8 It's not a terribly significant point.

9 By the way, let's clear up a few things before we
10 go farther.

11 I know that you have attended some of the
12 depositions, like all the depositions, that have gone
13 forth so far in this case.

14 A Except for Doctor Nearman's and Doctor Shuck's.

15 Q Okay. So you heard me instruct Doctor Wallace, and
16 certainly the same things apply in your case, which
17 are, number one: If for any reason you need to take
18 a break, just let me know and we'll be happy to take
19 that break as long as if I've asked you a question,
20 I'll ask you to answer the question then we'll take
21 your break.

22 The other thing is to make sure that as I'm
23 asking you questions that I am perfectly clear to you
24 in the manner in which I've asked that question. So
25 if there's anything at all about the way I've asked

1 the question that causes you to have difficulty in
2 understanding it, I'd like you to let me know. Would
3 you do that?

4 A Yes. Thank you.

5 Q And likewise, if I ask you a question and you don't
6 me tell me there's something about it that you don't
7 understand, I'm going to assume that you did
8 understand it. Is that fair?

9 A Fair.

10 Q And finally, just so that we make things clear, as
11 you know, the court reporter is here today to
12 transcribe what you and I say, and so to be sure that
13 what she gets down for us is going to be clear, I'd
14 like you to keep two things in mind. First, I'll do
15 the very best I can to make sure I don't cut off your
16 answers, and likewise, please be careful to not cut
17 off my questions so the court reporter only has to
18 type one of us talking at a time.

19 Second, often times I'm going to ask you
20 questions that will require a yes or a no response,
21 and when I do, I'd like you to make sure you use the
22 words yes or no, whichever you think is appropriate,
23 but avoid doing things like nodding or shaking your
24 head or saying things like uh-huh and mm-hmm, things
25 that are pretty normal in normal conversation but

1 don't read so well what you intended to mean in the
2 transcript, okay?

3 A I understand.

4 Q The Residency Program Anesthesiology is divided up in
5 four components, correct? It would be the base year,
6 the clinical base year, and then three years of
7 clinical anesthesia; is that correct?

8 A That's correct.

9 Q And the demarcations for the Clinical Anesthesia
10 Program is CA1, CA2, CA3, correct?

11 A That's correct.

12 Q And for each six months of the calendar year, the
13 residents are evaluated, right?

14 A Correct.

15 Q And that evaluation is then submitted to the American
16 Board of Anesthesiology; is that right?

17 A Correct.

18 Q And it's done through a -- what's the certification
19 called? The clinical --

20 A I know it as the CCC.

21 Q I think it's the Clinical Competency -- Clinical
22 Competency Certificate perhaps?

23 A Certification? I'm not sure.

24 Q And those reports are submitted in July for reviewing
25 the period of January through June, correct?

1 A Correct.

2 Q And then in January for the period that is July
3 through December, right?

4 A Correct.

5 Q And in each of those periods, a report was submitted
6 for Sarah Aronson, right?

7 A Correct.

8 Q Each of those periods during her residency.

9 A Correct.

10 Q And the requirement for her to graduate was that her
11 last six months had to be rated as satisfactory,
12 correct?

13 A That's a standard requirement, correct.

14 Q Under the ABA standards?

15 A Yes.

16 Q Is it ABA or ACGME?

17 A ABA.

18 Q So the ABA requires that the last six months of a
19 resident's training must be satisfactory, right?

20 A Must be satisfactory not for them to graduate, but
21 for them to be able to qualify and sit for their
22 certification Board exam.

23 Q Does the ABA have any other -- does the ABA have any
24 additional requirements for them to graduate?

25 A I believe if they've completed the necessary number

1 of satisfactory periods and they have not had any
2 issues outside of their training program, the ABA
3 will allow them to sit for a certification exam.

4 Q All right. Under the ABA standards, a resident has
5 to complete 36 months of satisfactory training; is
6 that accurate?

7 A Correct.

8 Q Once the resident has completed 36 months of
9 satisfactory training, are there any other
10 requirements that the resident has to meet to
11 graduate from the program?

12 A They have to meet ACGME requirements at that point.

13 Q What ACGME requirements exist in addition to
14 completing 36 months of satisfactory training?

15 A They've had to successfully complete a series of
16 different types of cases. There's a standard number
17 for each type of case for each rotation, and they
18 have to complete all these successfully.

19 For example, they have to have 20 trauma cases.
20 They also must have fulfilled their obligation in
21 time. In other words, they had to during those 36
22 months take no more than 60 days away from their
23 training.

24 Q Okay.

25 A And they would have to complete their case logs which

1 would certify or support their claim that they did
2 all the appropriate cases.

3 Q Okay. So the program, which you direct, is set up so
4 that the residents can complete all of the ABA
5 requirements and the ACGME requirements in 36 months;
6 is that correct?

7 A Correct.

8 Q And the only reason they wouldn't complete in 36
9 months, at least to the extent that the program
10 directs, is because some period during that 36 months
11 was not deemed satisfactory; is that fair?

12 A Correct.

13 Q And you also understand that if a resident receives
14 an unsatisfactory period in one six-month period, and
15 only one, that completing the next six-month period
16 in a satisfactory fashion results in the prior six
17 months being deemed satisfactory; is that right?

18 A That's the way I understand it.

19 Q In October of 2008, you had a meeting with Sarah
20 Aronson at which you and Doctor Wallace informed her
21 that it looked like she was going to receive an
22 unsatisfactory rating for that period, correct?

23 A I remember having that meeting, yes.

24 Q Okay. And during that meeting, you discussed with
25 her concerns about her performance?

1 A Most likely.

2 Q Do you recall yourself raising concerns about her
3 performance?

4 A Yes, I do.

5 Q And did you speak to her about concerns that you had
6 personally working with her?

7 A Yes, I did.

8 Q Tell me about which issue -- what issues you raised
9 with her based on your personal working with her.

10 A My concerns with Doctor Aronson was her inability to
11 act and respond in a rapid fashion during the periods
12 where she was taking care of patients in the ICU or
13 in the operating room.

14 Q And she asked you for specific examples when you
15 observed that behavior, didn't she?

16 A I'm not sure if I remember her asking me for specific
17 examples.

18 Q Do you recall whether you gave her specific examples?

19 A What I recall is telling her that when she was
20 working with me and I watched her perform in the
21 operating room or the ICU, I noticed that her
22 response time or her pattern of flow of movement was
23 much slower and delayed compared to other residents
24 of the same experience level.

25 Q Okay. And you worked with Doctor Aronson in the ICU

1 during the first week of October, correct?

2 A I believe I worked with her in that month. I don't
3 know what days.

4 Q And you were giving her your evaluation based, as I
5 said, on your personal working with her. Would it be
6 based on the week that you worked with her?

7 A It would have been based on the entire residency
8 program, her duration of her residency training. But
9 most likely I would have made a reference to the most
10 recent period that I worked with her, as well.

11 Q Had you worked with her directly before that October
12 rotation within the second half of 2008, so during
13 that latter reporting period?

14 A I don't recall.

15 Q Do you recall any specific incident that was
16 discussed with Doctor Aronson during the October 14th
17 meeting that occurred after July 1st of 2008?

18 A I don't recall any specific incidents.

19 Q You heard Doctor Wallace testify that he gave to
20 Doctor Aronson some documentation of evaluations at
21 this meeting, right?

22 A I believe so, yes.

23 Q Did you provide any different or additional
24 documentation to Doctor Aronson during this meeting?

25 A No.

1 Q And do you recall citing any evaluations of Doctor
2 Aronson's work, other than what was documented?

3 MR. BIXENSTINE: Would you repeat
4 that question?
5 - - - -

6 (Thereupon, question read by Notary.)
7 - - - -

8 A At that meeting?

9 Q Yes.

10 A No, I don't.

11 Q You had not yet documented your own evaluation of her
12 work, though, correct?

13 A Not written, no.

14 Q As you sit here today, can you think of any specific
15 incident that occurred between July 1st of 2008 and
16 October 14th of 2008 which would demonstrate Doctor
17 Aronson's inability to respond as you thought she
18 should have responded in the ICU or the OR?

19 A I can think of an incident, but I don't know if it
20 fell in that time period or not.

21 Q Okay. You met again with Doctor Aronson on November
22 24th of 2008 to discuss her performance, right?

23 A I believe so, yes.

24 Q And Doctor Wallace was also at that meeting, right?

25 A Correct.

1 Q And what do you recall was the gist of the message
2 you were giving Doctor Aronson about her performance
3 at that time?

4 A At that time, we met to follow up on the meeting in
5 October, and it was again to discuss her performance
6 issues.

7 Q Did you discuss with her -- well, and at that time,
8 you again -- you being you and Doctor Wallace
9 together -- again indicated to Doctor Aronson that it
10 appeared that she was going to receive an
11 unsatisfactory rating for the period; is that right?

12 A I believe we did at that time, yes.

13 Q Okay. Did you discuss with her any specific
14 performance problems that arose between October 14th
15 and November 24th?

16 A I don't recall.

17 Q Okay. On January 7th of 2009, you and Doctor Wallace
18 authored a letter to inform Doctor Aronson that she
19 was going to receive an unsatisfactory rating for the
20 period that was July through December of 2008, right?

21 A I believe so.

22 Q Between November 24th of 2008 and December 31st of
23 2008, was there anything about Doctor Aronson's
24 performance that changed in terms of the quality of
25 her performance?

1 A Do you want my personal opinion from observation or
2 do you want --

3 Q Fair enough. Let me rephrase it.

4 The evaluation that was conducted and led to her
5 receiving an unsatisfactory rating, I want to address
6 that evaluation. Were there any aspects of her
7 performance between November 24th and December 31st
8 that caused her to receive an unsatisfactory rating?

9 MR. BIXENSTINE: You mean
10 contributed in some way?

11 MR. GORDILLO: Yes.

12 A Not that I recall.

13 Q When you notified Doctor Aronson about her
14 unsatisfactory rating, you cited three basic points;
15 that she was unable to respond and react in stressful
16 situations, that she had been unprofessional in
17 failing to notify you about her use of Topamax, and
18 that she was unable to respond appropriately in a
19 clinical setting. I'm paraphrasing.

20 Would you agree with me that generally those are
21 the three areas that caused you to evaluate her
22 unsatisfactory?

23 A In general, I would agree with that, yes.

24 Q When you were talking about her inability to respond
25 appropriately in stressful situations, were you

1 talking about as you and the faculty observed her in
2 the ICU or OR?

3 A As I had observed her in the ICU or the OR. But
4 there are other faculty members who had the same
5 opinion during that period.

6 Q Okay.

7 A I don't remember which ones they were exactly.

8 Q Did you observe Doctor Aronson as being unable to
9 appropriately respond to stressful situations in the
10 OR between July 1st of 2008 and December 31st of
11 2008?

12 A I don't remember.

13 Q Okay. Did you observe her being unable to respond --
14 appropriately respond to stressful situations in the
15 ICU between July 1st of 2008 and December 31st of
16 2008?

17 A Yes, I did.

18 Q Did you observe Doctor Aronson as being unable to
19 respond appropriately in a clinical setting in the OR
20 between July 1st and December 31st of 2008?

21 A I don't recall.

22 Q Okay. Did you observe Doctor Aronson being unable to
23 respond appropriately in the clinical setting in the
24 ICU between July 1st of 2008 and December 31st of
25 2008?

1 A Yes. I think was that the same question I answered
2 previously.

3 Q I just asked you about OR. Now I'm asking you about
4 ICU.

5 A Before that.

6 MR. BIXENSTINE: I think that
7 clinical setting is a third of those
8 things you were talking about, not the
9 first one.

10 MR. GORDILLO: Right. She was cited
11 for unsatisfactory performance based on

12 --

13 MR. BIXENSTINE: Significant changes
14 in the aesthetic courses is that what you
15 mean.

16 MR. GORDILLO: Correct.

17 A I think I'm getting what you're saying now.

18 Q I'm talking about this third item, which I think you
19 wrote that she had failed to demonstrate her ability
20 to recognize and respond appropriately to significant
21 changes in the anesthetic course. That was the exact
22 language that you used, which I paraphrased that she
23 wasn't responding appropriately in the clinical
24 setting, which was different than the first item
25 being able to respond in stressful situations.

1 A Correct.

2 Q Now I'm asking about this ability to respond
3 appropriately in a clinical setting.

4 A By clinical setting you mean?

5 Q Specifically her failure to respond appropriately to
6 significant changes in anesthetic course.

7 A I did not witness that in that time period because
8 anesthetic course to me means the operating room.

9 Q Okay. Did you receive any faculty evaluations
10 reflecting that Doctor Aronson was unable to
11 appropriately respond to stressful situations in the
12 OR during the period July 1st of 2008 through
13 December 31st of 2008?

14 A I believe so, but I'd have to go back and look at the
15 records to know exactly what the dates were, but I'm
16 not sure.

17 Q Do you recall sharing any of those negative
18 evaluations with Doctor Aronson?

19 A I believe we presented those to her on -- in the
20 meeting in October.

21 Q The document provided to her by Doctor Wallace?

22 A Yes. I think we provided the summary of resident's
23 competencies at that meeting, I believe.

24 Q Other than documentations of evaluations presented to
25 Doctor Aronson at the October meeting, did you share

with her any negative evaluations reflecting her inability to respond appropriately to stressful situations in the OR during the second half of 2008?

A Not that I can remember.

Q And did you receive any faculty evaluations reflecting that she was unable to respond appropriately in the clinical setting during the period of July 1st 2008 through December 31st of 2008?

MR. BIXENSTINE: That's the

anesthetic course?

MR. GORDILLO: Right.

A I believe so, but again, I'd have to look at the records to see what those dates were.

Q Okay. And were those evaluations -- did you present any of those evaluations to Doctor Aronson?

A If they existed, then they were presented.

Q And the evaluations that were presented were the ones that Doctor Wallace gave her?

A I believe so.

Q At the October meeting?

A I believe so.

Q The decision to give her an unsatisfactory rating is based on the recommendation of the Clinical Competence Committee; is that correct?

1 A Yes.

2 Q Who chaired the Clinical Competence Committee at the
3 time that she received her unsatisfactory evaluation?

4 A I'm not sure we had a designated chair for that
5 committee.

6 Q The committee was comprised of you, Doctor Wallace,
7 and Doctor Nearman, correct?

8 A Correct.

9 Q From the beginning of Doctor Aronson's residency
10 program -- Anesthesiology Residency Program --
11 through June 30th of 2008, she received satisfactory
12 evaluations of her performance for each six-month
13 period, correct?

14 A Correct.

15 - - - -

16 (Thereupon, Exhibit 40 was marked for the purpose of
17 identification.)

18 - - - -

19 Q (By Mr. Gordillo) You've been handed a document
20 marked as Exhibit 40. Each time you're handed a
21 document today, I want to make sure you take all the
22 time you'd like to look it over and let me know when
23 you've had an adequate opportunity to review it.

24 A Thank you.

25 Q You had time to look it over?

1 A Yes, sir.

2 Q Do you recognize this document?

3 A Yes.

4 Q Tell me what it is, please.

5 A It's a request for reference from Sheridan
6 Healthcare.

7 Q Okay. And was this the reference that you gave for
8 Doctor Aronson to Sheridan Healthcare?

9 A Yes, it is.

10 Q And at the top right, it indicates faxed 9/3/08. Is
11 that about the time at which you gave this reference?

12 A That would make sense.

13 Q Okay. And on the first page, there were three areas
14 that you indicated you could not evaluate Doctor
15 Aronson?

16 A Mm-hmm.

17 Q And all other areas that you were asked about, you
18 give her a good or excellent rating, correct?

19 A That's what it says here.

20 Q And on the second page, the bottom, that's your
21 signature?

22 A Yes, it is.

23 Q Dated September 2nd of '08, right?

24 A Yes.

25 Q And so on the 2nd of September, you recommended

1 Doctor Aronson as qualified and competent, correct?

2 A Yes.

3 Q And what were you recommending her for?

4 A A position at Sheridan Healthcare.

5 Q Okay. And you understood more specifically that she
6 was applying for a position in the field of
7 anesthesiology, right?

8 A Yes.

9 Q As an anesthesiologist?

10 A Correct.

11 Q As of September 2, 2008, based on your close personal
12 observation, you believed that Doctor Aronson was
13 qualified and competent to be an anesthesiologist,
14 right?

15 A She met the minimum requirements at that point.

16 Q And you had no reservation at that point, right?

17 A I did not document that I had reservations at that
18 point.

19 Q Is your answer to my question yes?

20 A Yes.

21 Q You also offered your evaluation not only based on
22 your close personal observation but on a composite
23 evaluation of her supervisors, correct?

24 A Yes.

25 Q Is it fair to say that your opinion of her

1 . performance changed after September 2, 2008?

2 A Yes.

3 Q You testified a little bit ago that your evaluation
4 of Doctor Aronson's performance did not change
5 between November 24th and December 31st of 2008,
6 right?

7 MR. BIXENSTINE: Objection. Go
8 ahead.

9 Q Well, let's make sure. I'm not trying to put the
10 words in your mouth, so if I misstated that, please
11 correct me.

12 A Correct.

13 Q So between November 24th of 2008 and December 31st of
14 2008, were you prepared to recommend as qualified and
15 competent Doctor Aronson for a position as
16 anesthesiologist?

17 A Based on the information that I had in November
18 compared to what I had in September, I would have to
19 say no.

20 Q So is it fair to say that sometime between
21 September 2nd of 2008 and November 24th of 2008, your
22 opinion changed about Doctor Aronson's performance?

23 A That would be correct.

24 Q Did your opinion about Doctor Aronson's qualification
25 to be an anesthesiologist change between September

2nd of 2008 and October 14th of 2008?

A I would say yes.

Q Okay. And your opinion was lower in terms of her ability to be an anesthesiologist; is that fair?

A That's fair.

Q Was there anything about her performance between October 14th and November 24th that changed your opinion one way or the other about her ability to perform as an anesthesiologist?

MR. BIXENSTINE: You mean as he
served it?

MR. GORDILLO: Yes -- well, no. Let me correct that.

Q Anything. Leave it open.

A I don't remember anything specific.

Q Okay. Did Doctor Aronson exhibit problems in her performance during specific rotations?

MR. BIXENSTINE: Again, this is during this second half of 2008 you're referring to, or just generally?

MR. GORDILLO: During the second half of 2008.

A I remember evaluations coming from the Critical Care rotation specifically, but I don't remember any other ones.

1 Q And the Critical Care rotation is the same as ICU?

2 A Yes.

3 Q When you spoke about difficulties with her
4 performance in the OR, does that include her ICU
5 rotation?

6 A No. Those are separate.

7 Q Separate. Okay. You mentioned that one of the ACGME
8 requirements for the residents was to work on 20
9 trauma cases; is that right?

10 A Correct. That was an example that I used.

11 Q Right. What is a trauma case?

12 A A trauma case would be any procedure that resulted on
13 a patient from major trauma, such as a motor vehicle
14 accident or gunshot wound, stabbing, a fall.

15 Q Do you know why it's important for a resident to work
16 on a minimum number of trauma cases as specified in
17 the ACGME?

18 A No. They changed it from 10 to 20. They gave us no
19 reason.

20 Q As program director, do you think it's important for
21 the residents to work on trauma cases?

22 A Yes, I do.

23 Q Why?

24 A It's a typical type of anesthetic case that an
25 anesthesiologist would see out in practice, and I

1 believe they need experience taking care of those
2 because they have issues that are particular to that
3 type of anesthetic and that type of patient.

4 Q Generally, what kind of issues are you talking about?

5 A Temperature control, fluid management, issues with
6 exsanguination, issues with injuries to the lungs,
7 the heart, major abdominal organs, injuries to the
8 cervical spine and airway.

9 Q And trauma cases typically come in through emergency?

10 A Typically, yes.

11 Q Are there other rotations in which the residents get
12 comparable emergency experience?

13 A Occasionally when they're in orthopedics, they will
14 get a case involving a bone fracture from a fall, and
15 up until a certain point, the ACGME counted those as
16 major trauma, but I think they changed the definition
17 in the last few years. I'm not sure.

18 Q Would you consider the ability to have rapid response
19 more important in trauma cases than perhaps the other
20 anesthesiology cases?

21 A I would say that it's more likely to be needed in
22 those cases compared to others, but you need it in
23 every case.

24 Q Sure. If somebody has a complication, you have to be
25 able to respond no matter what the situation, fair?

1 A Fair.

2 Q But like you say, it's most likely to arise in a
3 trauma case?

4 MR. BIXENSTINE: Objection.

5 Q An emergency situation is most likely to arise in a
6 trauma case; is that fair?

7 A More likely.

8 Q More likely, okay.

9 A I can think of examples that it would be most likely.

10 Q During which rotations would emergency situations be
11 most likely to arise?

12 A I would say cardiothoracic cases, liver transplants,
13 and unstable pediatric cases.

14 Q During the meeting of October 14, 2008 when you and
15 Doctor Wallace informed Doctor Aronson that she was
16 likely to receive an unsatisfactory evaluation, did
17 she express disagreement to you?

18 A I believe so.

19 Q All right. Do you recall what she said and how she
20 disagreed?

21 A Not specifically.

22 Q Okay. Tell me what you do recall in terms of the
23 exchange that went on among you and Doctor Wallace
24 and Doctor Aronson during the October 14th meeting.

25 A In essence, she wanted to know the basis of our

1 decision, my personal opinion, and I expressed to her
2 the same opinion that I had done in the past, that I
3 didn't think her response time was adequate in
4 certain situations and that other people at that time
5 had also been expressing concerns that she was
6 getting close to graduation and hadn't sharpened that
7 skill of multitasking and performing quickly in the
8 routine settings and also in stressful situations.

9 Q Do you remember anything else that was said during
10 that meeting?

11 A By myself?

12 Q By anyone.

13 A Not specifically.

14 Q During the November 24th meeting when you and Doctor
15 Wallace informed Doctor Aronson again that she might
16 be getting an unsatisfactory rating, do you recall
17 her disagreeing with that opinion at the time?

18 A I believe so.

19 Q Okay. What do you recall about what she said in
20 terms of disagreeing with your opinion?

21 A She didn't have a reason for what was causing this
22 issue, to the best of my knowledge.

23 Q So she disagreed with you because she didn't have a
24 reason?

25 A That's what I remember. That was the initial part of

1 the discussion.

2 Q Okay. What do you recall you and Doctor Wallace
3 having told Doctor Aronson about her performance at
4 the November meeting?

5 A We tried to find a reason for her inability to
6 respond appropriately in those situations, and we
7 discussed some options, some possible reasons, and
8 one that eventually came out was that she was taking
9 a medication, the Topamax, that could have cognitive
10 effects on her ability to think clearly and rapidly
11 in a situation.

12 Q Now, that meeting that you had on November 24th was
13 one that had generally be scheduled as a result of
14 the October 14th meeting, right?

15 October 14th you said you were going to meet four
16 to six weeks later?

17 A I believe that was intended as follow-up, yes.

18 Q In November of 2008, Doctor Aronson was in the Acute
19 Pain Service rotation; is that right?

20 A I'd have to check the schedule, but I can't argue
21 with you yes or no.

22 Q Do you know whether she received satisfactory
23 evaluations for her work in the Acute Pain Service
24 rotation?

25 A I don't remember any evaluations for that month.

1 Q And at the November 24th meeting, do you recall
2 discussing with her any particular negative
3 evaluations of her work from the November rotation
4 she was in?

5 A Nothing in particular, no.

6 Q Did you work directly with Doctor Aronson in her
7 November rotation?

8 A No, I did not.

9 Q Do you know if Doctor Wallace worked directly with
10 her in her November rotation?

11 A I do not.

12 Q With respect to the October 14th meeting, who decided
13 that the meeting was necessary?

14 A It may have been me because of the recent exposure to
15 her performance in the ICU and some other evaluations
16 or some comments that other attendings were making
17 about Doctor Aronson prompted me to have that
18 meeting.

19 Q And these were comments from other attendings based
20 on her performance in October?

21 A I believe so, or even maybe in September, but I'm not
22 sure.

23 Q What other comments were made to you about her
24 performance in October or maybe even September?

25 A I don't know specifically. Things to the effect that

they didn't think she was ready to graduate. She hadn't improved since the last time they saw her, those kinds of comments.

.....

(Thereupon, Exhibit 41 was marked for the purpose of identification.)

— — ····· ······

Q (By Mr. Gordillo) You've been handed a document marked as Exhibit 41. Please take all the time you'd like to look it over and let me know when you've had an adequate opportunity to review it.

12 A Okay.

13 Q Do you recognize the document?

14 A I recognize the document as a copy of our
15 evaluation -- an evaluation for Doctor Aronson.

16 Q And this is your evaluation of Doctor Aronson, right?
17 You see on the first page, the right-hand side

18 there, the evaluator is cut off, but --

19 A Yes.

20 Q And it's your evaluation for the period October 6th
21 through October 10th of 2008?

22 A Correct.

23 Q Okay. And as you look at this document, does that
24 refresh your recollection of being a time period
25 during which you worked with Doctor Aronson in the

1 . . . ICU?

2 A Yes, it does.

3 Q And you entered this evaluation into the system in
4 December of 2008, correct?

5 A I'm looking to see when it was entered, but I don't
6 see it on here.

7 Q I'll represent to you, I never saw it on this
8 document, either, but I gathered from other
9 information provided in the context of this
10 litigation that it was sometime during December of
11 2008 when you entered this evaluation. So I ask you
12 if you recall that to be accurate, whether you
13 entered that evaluation sometime in December of 2008?

14 A I couldn't argue with you that it wasn't in December
15 of 2008.

16 Q Okay. You would agree with me it was sometime after
17 October 10th of 2008?

18 A Yes.

19 Q And it was after October of 2008?

20 A Yes

21 0 And was after the November 24th meeting?

22 A That's possible.

23 Q Okay.

24 A Yes.

25 O Other than this evaluation, did you enter any other

1 evaluations of Doctor Aronson for the period of,
2 let's say, September 2nd of 2008 through
3 December 31st of 2008?

4 A Not that I can recall.

5 Q And you would agree with me that this Exhibit 41
6 reflects your opinion that her overall clinical
7 competence in the rotation was below average?

8 A Yes.

9 Q And is it fair to say that for the period that is
10 September 2nd of 2008 through December 31st of 2008,
11 this is the only written evaluation of Doctor Aronson
12 that you provided indicating that she was -- her
13 overall clinical competence in the rotation was below
14 average?

15 A If that's all you have, then that's it, yes.

16 Q Okay. And of course, I'm excluding the CCC Report.
17 We're not talking about that. We're talking about
18 specific evaluations.

19 A Yes.

20 MR. BIXENSTINE: You were talking
21 about his.

22 MR. GORDILLO: Yes.

23 MR. BIXENSTINE: Right.

24 Q This document that is marked as Exhibit 41 is a copy
25 of a document that was marked as Exhibit B during

1 Doctor Aronson's deposition. As I look at the
2 document and see the two pages, it appears to me to
3 be incomplete. Can you tell me whether that's true?

4 A The only blank space I see is under Program Director
5 Comments.

6 Q Okay. But for example, if you see at the bottom of
7 the first page with the core competency of Patient
8 Care, it indicates Data Collection.

9 A Yes.

10 Q But that's the only category under Patient Care.
11 Does this form typically include more than Data
12 Collection under the category Patient Care as a core
13 competency?

14 A Yes.

15 Q Okay. And I don't see it included in this document.
16 Do you?

17 A I see three out of the six core competencies.

18 Q And so normally the evaluation would include all six
19 competencies, right?

20 A Correct.

21 Q And each category complete under each core
22 competency, right?

23 A Correct.

24 Q So that's what I'm asking you. Does it appear that
25 there are missing core competencies?

1 A I understand.

2 Q So the document is not complete?

3 A I understand. Yes.

4 Q Do you know why your evaluation of Doctor Aronson's
5 performance for the period October 6th through
6 October 10th of 2008 was not entered into the system
7 for at least six weeks?

8 A The way the system works is after the month of ICU
9 rotation is done, our residency coordinator sends out
10 via computer my evaluation form indicating to us that
11 we have to fill out an evaluation for that resident.
12 There are occasions when that is not sent to us
13 immediately after the rotation is over. Sometimes
14 it's several weeks. That's the only thing I can
15 think of, is that I got it several weeks after the
16 rotation. But I had discussed it with her, her
17 evaluation, at the time of the rotation.

18 Q You discussed this evaluation reflected in Exhibit 41
19 with Doctor Aronson at the October 14th meeting; is
20 that correct?

21 A Correct. I probably discussed it with her during the
22 rotation, as well, but I'm not sure of that part, but
23 I'm pretty sure we discussed it at the October 14th
24 meeting.

25 Q And your negative evaluations of her based on your

1 personal observation of her work in the second half
2 of 2008 arose from this period that is October 6th
3 through October 10th; is that right?

4 A Correct.

5 Q Did your evaluation of her work change in any way
6 between October 10th of 2008 and November 24th of
7 2008?

8 A My personal impression?

9 Q Yes.

10 A I don't recall.

11 MR. BIXENSTINE: Sometime when you
12 get to a good point, I need to use the
13 restroom here and take a short break.

14 MR. GORDILLO: This is a good point,
15 actually.

16 - - - -

17 (Thereupon, a recess was had.)

18 - - - -

19 (Thereupon, Exhibit 42 was marked for the purpose of
20 identification.)

21 - - - -

22 Q (By Mr. Gordillo) Now you've been handed a document
23 marked as Exhibit 42. Please take all the time you'd
24 like to look it over and let me know when you've had
25 an adequate opportunity to review it.

1 A Okay.

2 Q Do you recognize the document?

3 A I believe so.

4 Q Can you tell me what it is, please?

5 A It is a Request for Professional Reference by a
6 Florida Hospital for Doctor Aronson.

7 Q Addressed to you, right?

8 A Yes.

9 Q Or at least it was attempted to be addressed to you,
10 but your name is misspelled.

11 A Yes.

12 Q And did you in fact complete this evaluation?

13 A I incompletely completed this evaluation.

14 Q To the extent that this document is completed with
15 evaluative remarks, are they your evaluative remarks?

16 A Yes.

17 Q Tell me what you recall about the circumstances
18 concerning how you received this request for your
19 evaluation and then subsequently reported it.

20 A I can't remember why I didn't finish completing this
21 evaluation, this reference. I didn't sign it so
22 obviously I didn't send it.

23 Q Did you have any communication with anyone at Florida
24 Hospital, Flagler, about this evaluation?

25 A No, I didn't. I don't remember why I didn't finish

1 completing this.

2 Q To the extent that this document is completed, do you
3 know when you completed it?

4 A Well, it was received February 19th -- or sent
5 February 19th. Typically I tried to fill these out
6 as quickly as possible, but I don't know.

7 Q Okay.

8 A I'm trying to jar some memory, but --

9 Q Do you believe this document was filled out before
10 June 4th of 2009?

11 A I would say that I filled this out long before June
12 if it was sent to me in February.

13 Q As you look at the document that's been marked as
14 Exhibit 42, on the first page under the section that
15 is Roman Numeral II, there are a number of categories
16 that you are asked to rate numerically.

17 Do you see from looking?

18 A Yes.

19 Q Would you tell me whether any of these categories
20 correspond to the ability to respond appropriately to
21 significant changes in the anesthetic course?

22 A If I were to include that, it would be under Patient
23 Management, would be my best guess.

24 Q Okay. And a category which sometime between
25 September 19th and June 4th, you would have rated

1 Doctor Aronson as average; is that fair?

2 A 5, yes.

3 Q What caused you to rate Doctor Aronson as an 8 under
4 appearance?

5 A She dressed neatly. She was well kempt. She
6 presented herself well.

7 Q What prevented her from being a 9 or 10?

8 MR. BIXENSTINE: It's all I can do
9 to avoid making a joke about that, but go
10 ahead.

11 A What could she have done to be a 9 or a 10? Maybe
12 wear a business suit, which I think is unnecessary in
13 the clinical setting, but that's it.

14 Q Anything else?

15 A I can't think of anything else.

16 Q Look back again at Exhibit 40, please. Other than
17 Exhibit 40, did you have any communication with
18 Sheridan Healthcare about Doctor Aronson's seeking
19 employment with Sheridan Healthcare?

20 A No.

21 Q Did you become aware that she -- go ahead.

22 A You mean at the time of this?

23 Q At any time.

24 MR. BIXENSTINE: Are you referring
25 to -- you made some distinction between

1 some kind of Sheridan of Florida and a
2 somewhat distinct Sheridan -- are you
3 intending this question to focus on
4 Florida?

5 MR. GORDILLO: Yes.

6 MR. BIXENSTINE: Okay.

7 A I had no conversations regarding Sheridan in regards
8 to an employment in Florida.

9 Q Okay. So you were aware that Doctor Aronson was
10 seeking employment with Sheridan Healthcare in
11 Florida, right?

12 A Correct.

13 Q And the only communication you had with Sheridan
14 about Doctor Aronson trying to get the employment in
15 Florida was Exhibit 40; is that right?

16 A Correct.

17 Q She later tried to get employment in Maryland with
18 Sheridan Healthcorp. Are you familiar with that?

19 A Correct.

20 Q Through Peninsula?

21 A Correct.

22 Q And you had communications with Sheridan in that
23 context?

24 A Yes.

25 - - - -

1 . (Thereupon, Exhibit 43 was marked for the purpose of
2 identification.)
3 - - -

4 Q (By Mr. Gordillo) You've now been handed a document
5 marked as Exhibit 43. Please take all the time you'd
6 like to look it over and let me know when you've had
7 an adequate opportunity to review it.

8 MR. BIXENSTINE: Can you see your
9 second page? Okay.

10 A Okay.

11 Q Do you recognize the document?

12 A I do.

13 Q Can you tell me what it is, please?

14 A It is a form sent to Maryland Board of Physicians by
15 myself to evaluate or to confirm Doctor Aronson's
16 participation in our residency program.

17 Q All right. And on the first page, that starts Part
18 2, a series of questions that continues on to the
19 second page, right? Do you see Part 2?

20 A Yes.

21 Q And those questions that begin on the first page of
22 Question Number 1 and going to the second page to
23 Question Number 8 were completed by you?

24 A I don't believe Question 1 was completed by me
25 because that's not my handwriting.

1 Q Okay.

2 A Under Program Specialty it says Anesthesiology.

3 That's not my handwriting.

4 Q Okay.

5 A My handwriting is on the back.

6 Q So on the second page, you signed the document,
7 right?

8 A Correct.

9 Q So you're verifying the information provided in Part
10 2 of the document, right?

11 A Correct.

12 Q On the second page of the document, the responses to
13 Questions 6 and 8, are those yours?

14 A Yes.

15 Q Is that your handwriting?

16 A Yes, it is.

17 Q Did you confer with anyone else about how to respond
18 to Question 6? And let me qualify my question by
19 saying I don't want to know about conversations you
20 may have had with legal counsel, okay?

21 Other than conversation with legal counsel, did
22 you confer with anyone about how to respond to
23 Question 6?

24 MR. BIXENSTINE: By the way, legal
25 counsel would include me and would also

1 . include --

2 A I don't believe so.

3 Q And I don't want to know about the content of any
4 conversation that you had with any lawyer about how
5 to respond to this. So making that clear, did you
6 complete the answer to Question Number 6 with the
7 benefit of legal counsel?

8 And I'm really looking for a yes or no answer
9 here, because I don't want to know the content if any
10 conversation occurred.

11 A I don't remember if I discussed this question with
12 legal counsel when I filled it out.

13 Q This question being Number 6?

14 A Yes. Number 6.

15 Q And with respect to Question Number 8? Again, I'm
16 looking for a yes or no response, not for any
17 content.

18 Did you answer Question Number 8 with the benefit
19 of legal counsel?

20 A I don't think so.

21 Q Did you confer with anyone about how to respond to
22 Question Number 8?

23 A I think I may have discussed it with Doctor Nearman.

24 Q Did you discuss how to Answer Number 6 with Doctor
25 Nearman?

1 A I don't remember. I believe I discussed with Doctor
2 Nearman some of the issues at that time. I don't
3 believe he was present when I wrote this.

4 Q But you think you talked to him before you wrote it?

5 A I think I did.

6 Q Tell me what you recall from that conversation.

7 A What I recall is what's on the paper, what we
8 documented. I don't remember anything specific, but
9 I think I did ask for his opinion.

10 Q You signed the document on May 6th of 2009?

11 A Correct.

12 Q Did you complete the document at about the same time?

13 A Yes.

14 Q Okay. And did you have the discussion with Doctor
15 Nearman close in time to May 6, 2009?

16 A Most likely.

17 Q You wrote in response to Number 6 that the most
18 likely cause of Doctor Aronson's performance not
19 being up to expectation was the influence of
20 medication, right?

21 A Correct.

22 Q And when you wrote that, did that accurately reflect
23 what you believed to be the cause of any performance
24 problems Doctor Aronson experienced?

25 MR. BIXENSTINE: Any performance

problems ever?

MR. GORDILLO: Well, as referenced
question Number 6.

A I believe what I said at the time, it was the most likely cause of her performance issues. Yes, I do believe that and believed it then, as well.

Q Was there a time when you held any other belief about the cause of performance problems that you're referencing in response to Question Number 6?

A Prior to knowing that she was taking the Topamax, I had other considerations. But after the disclosure of that information, that seemed to be the most likely cause.

Q What other considerations did you have before she disclosed her taking of Topamax?

A Some individuals just don't have the capacity to multitask or to perform in a speedy or rapid fashion. That was my initial belief when I first saw her working in early parts of her Anesthesia Program. Often residents do improve and overcome those deficits, and in her case, that never happened. That was -- prior to November, that was my most likely cause.

Q And you also believed as of May 6, 2009 that she stopped taking the medication, right?

1 A I was under the impression that she had stopped
2 taking it.

3 Q And you believed that her performance improved as of
4 May 6, 2009?

5 A I had noticed some increased rapidity in which she
6 responded.

7 Q Is your answer to my question yes?

8 A Yes. I'm sorry.

9 Q In answer to Question Number 8, you had indicated
10 that because her performance had been affected during
11 her last six-month period, an additional six-month
12 period was added; is that right?

13 A No. That's not correct.

14 Q Well, you wrote: Since the implication of the
15 medication affecting her performance was determined
16 during her last scheduled six-month period, an
17 additional six-month period was added to her
18 training. Is that correct?

19 A That's what I said, what I wrote.

20 Q Was it your belief that because of her performance
21 problems during her last scheduled six-month period,
22 she needed six more months to show that her
23 performance improved?

24 A Yes.

25 Q Who was responsible for deciding that the way to

1 address the concerns about Doctor Aronson's
2 performance was to give her an additional six-month
3 period to improve?

4 A Well, there was one conversation between myself,
5 Doctor Wallace, and Doctor Aronson. And then there
6 was another conversation between myself, Doctor
7 Nearman, and Doctor Aronson. And during those
8 conversations, alternatives to what we should do at
9 this that point were discussed.

10 Q When did the conversation among you, Doctor Wallace,
11 and Doctor Aronson occur?

12 A I believe that was the one on November 24th.

13 Q Okay. And when did the conversation among you and
14 Doctor Nearman and Doctor Aronson occur?

15 A That would have been after that, but I'm not sure of
16 the date.

17 Q So during the November 24th meeting, you and Doctor
18 Wallace specifically discussed the fact with Doctor
19 Aronson that she may need to add six more months to
20 her training to show that her performance could be
21 improved; is that accurate?

22 A Yes.

23 Q Before the meeting with Doctor Aronson, did you
24 discuss the options for Doctor Aronson with Doctor
25 Wallace?

1 A Yes.

2 Q Okay. And did the discussion with Doctor Wallace
3 include as an option extending Doctor Aronson's
4 training?

5 A Yes.

6 Q When did that discussion or those discussions with
7 Doctor Wallace happen?

8 A Shortly before the meeting.

9 Q Okay. What were the options that you and Doctor
10 Wallace discussed?

11 A We could do nothing. We could give her
12 unsatisfactory for that six-month period and extend
13 the residency training period. We could terminate
14 the residency program. We could not graduate her at
15 the end of her completed residency.

16 Q Did you discuss any other options?

17 A Those are the ones I remember.

18 Q Did you discuss whether to confer with any of your
19 other colleagues at UH Case Medical Center about what
20 options might exist?

21 A No. I don't think so.

22 Q Did you consider discussing with Doctor Shuck what
23 options might exist?

24 MR. BIXENSTINE: You're talking
25 about when he was meeting with Wallace in

1 . advance of this meeting?

2 MR. GORDILLO: Yes.

3 A No.

4 MR. GORDILLO: Off the record.

5 - - - -

6 (Thereupon, a recess was had.)

7 - - - -

8 Q (By Mr. Gordillo) Did you confer with Will Rebello
9 about what options might be discussed with Doctor
10 Aronson at the November 24th meeting with respect to
11 improving her performance?

12 A I did not. I think Doctor Wallace did, but I'm not
13 sure.

14 Q And do you believe that if Doctor Wallace conferred
15 with Mr. Rebello, that happened before you and Doctor
16 Wallace had met to discuss options you were going to
17 present at the November 24th meeting?

18 A I think it happened after we met, when Doctor Wallace
19 and I met, but before the meeting with Doctor
20 Aronson.

21 Q Okay. Did you then confer again with Doctor Wallace
22 about what he may have spoken about when he talked to
23 Mr. Rebello?

24 A I believe so, right before the meeting.

25 Q Okay. And what did Doctor Wallace tell you about the

1 conversations he may have had with Mr. Rebello
2 concerning options for Doctor Aronson?

3 A I think the options we came up with were based on
4 what he had discussed with Will Rebello, to the best
5 of my knowledge.

6 Q One of the options that you mentioned was rating her
7 as unsatisfactory and extending her residency,
8 correct?

9 A Correct.

10 Q In terms of extending her residency, did you discuss
11 what options might be included to address extending
12 her residency?

13 A No.

14 Q Okay. So when you talk about extending her
15 residency, is it fair to say that the only option you
16 considered with regard to extending her residency was
17 to add a six-month training period?

18 A Correct.

19 Q Did you consider adding -- instead of adding six
20 months to her training, asking her to repeat any
21 specific rotations?

22 A At some point, we did discuss if there were
23 additional training, that the ICU rotation would be
24 important because that's where she seemed to have a
25 lot of trouble.

1 Q All right. But I'm asking a little bit different
2 question. The response was reasonable, but I'm
3 asking whether you considered having her repeat the
4 ICU rotation as being sufficient extension of her
5 residency?

6 A I believe we did think about that, but because of the
7 remaining schedule that would be December, January,
8 and February, we weren't going to be able to fit her
9 into the ICU during that period, to the best of my
10 knowledge.

11 Q There was some discussion about trying to put her
12 into ICU in January, right?

13 A I believe so.

14 Q We're talking about January of 2009. And then there
15 was a determination made that based on the notice
16 being too short, you couldn't put her in; is that
17 right?

18 A I believe that was the reason. It's very difficult
19 to change an ICU rotation schedule, but --

20 Q Did you and Doctor Wallace discuss the possibility
21 before finding out whether she could fit into the ICU
22 rotation whether having her repeat the ICU rotation
23 alone might be sufficient opportunity for her to
24 improve her performance?

25 A I don't believe we had that discussion.

1 Q Were you aware of that being an option as an
2 appropriate means to give her opportunity to improve
3 her performance?

4 A Yes.

5 Q And forgive me if you answered this question, but I
6 want to be clear of my understanding.

7 Did you consider that as an option, that being
8 repeating only the ICU rotation?

9 A Is this a yes or no question?

10 MR. BIXENSTINE: Only if yes or no
11 will work. Otherwise --

12 MR. GORDILLO: I think it is, but --

13 A I don't believe we thought of that as the sole
14 component of the extension, of giving her another
15 option.

16 Q Is that because you just didn't consider it at the
17 time or you ruled it out as a possibility?

18 A I believe we didn't think it was sufficient in
19 itself, although it would help very much if she had
20 been able to go through the SICU, get a good
21 performance, and try to squelch some of the negative
22 evaluations she had before. That would have been a
23 very good option, very good opportunity for her to
24 show that she was improving.

25 Q When was the first time you examined whether she

1 could be put back into another SICU rotation?

2 A I don't remember the exact time.

3 Q Was it after the November 24th meeting?

4 A Most likely.

5 Q Looking again at Exhibit 43, this would have been a
6 form submitted to the Maryland Board of Physicians,
7 right?

8 A Yes.

9 Q Did you have other communication with Sheridan
10 Healthcorp in connection with Doctor Aronson's trying
11 to obtain employment with Sheridan in Maryland?

12 A Yes.

13 Q What other communications did you have with Sheridan
14 Healthcorp?

15 A It was a telephone communication.

16 Q When did that occur?

17 A I don't know the exact date. It was during the
18 period she was trying to get credentialed.

19 Q It would have been sometime after May 6th?

20 A Oh, yes.

21 Q Was it after she had graduated from the program?

22 A I believe so.

23 Q Would it have been in September of 2009?

24 A That's quite possible.

25 Q Was your communication with Sheridan Healthcorp one

1 time only?

2 A No. I think there were two conversations.

3 Q Were both conversations with the same person at
4 Sheridan?

5 A No -- well, yes. The first conversation, I believe,
6 was between myself and another physician.

7 Q Do you know who it was?

8 A I think it was Doctor Weiss, but I'm not sure. And
9 then in the second conversation, one other person was
10 included, but I don't remember the name.

11 Q So the second conversation was with Doctor Weiss and
12 another person?

13 A Correct.

14 Q And the other person you think was a physician?

15 A I think so.

16 Q But you don't recall who that other physician would
17 have been?

18 A No.

19 Q It was another physician from Sheridan?

20 A Yes.

21 Q All right. Let's talk about the first conversation
22 you had with the physician you think was Doctor
23 Weiss. What was the gist of that conversation?

24 A I believe he contacted me because of an evaluation
25 that was filled out and sent to him on Doctor

1 . Aronson's behalf.

2 Q And was that an evaluation that you completed?

3 A Yes.

4 Q Did he tell you why he was calling you about the
5 evaluation?

6 A He said there were some concerns about what I had
7 written.

8 Q Did he tell you what those concerns were?

9 A Yes.

10 Q What did he say the concerns were?

11 A His concerns surrounded the reason for Doctor
12 Aronson's training extension. I believe it was
13 presented to them by her that there was a health
14 issue involved, and I believe in my report to him, I
15 stated or indicated that the extension was due to
16 performance and professionalism reasons. And because
17 those two pieces of information were different, they
18 were concerned.

19 Q And what did you say to Doctor Weiss about those
20 differences or concerns?

21 A I told him -- I told him the information that was
22 included in the ABA Report.

23 Q And by the ABA Report, are you referring to the
24 information summarized in the letter that you sent to
25 Doctor Aronson on January 7th of 2009?

1 A I believe so, yes.

2 Q Let's take a look at Exhibit 1, and Exhibit 1 is the
3 January 7, 2009 letter you sent to Doctor Aronson
4 explaining what was in the ABA Report; is that right?

5 A Correct.

6 Q And so in your conversation with Doctor Weiss, you
7 relayed to him in substance the same information that
8 is in the second paragraph of Exhibit 1; is that
9 right?

10 A That would be correct.

11 Q Did you respond in any way to Doctor Weiss's having
12 raised a concern that Doctor Aronson had described
13 the problem as a health issue?

14 A I don't remember that in particular. I do remember
15 him stating -- yes. To some extent it was a health
16 issue that had been rectified eventually, because I
17 believe he was involved with her trying to get the
18 job in Florida. I'm sorry. I'm just speculating, so
19 I shouldn't.

20 Q Well, did he ask you what your views were with
21 respect to her representing that the problem was
22 related to a health issue?

23 A I don't believe he asked me that specifically.

24 Q As you understood his communicating to you what she
25 had said about the reasons, did you understand her

1 explanation to be consistent with what you had
2 provided on the evaluation form?

3 A It didn't appear to be.

4 Q You thought the two responses were inconsistent?

5 A I didn't see her response. All I know is what my
6 response was. They were concerned that there were
7 inconsistencies in the responses.

8 Q Okay. Based on what Doctor Weiss shared with you
9 about her response, did you believe her response and
10 your response were inconsistent?

11 A Yes.

12 Q Why did you believe the two responses were
13 inconsistent?

14 A Because her training extension was not due to a
15 health issue or a transient medical issue that was
16 mentioned earlier.

17 Q Why did you inform the Maryland Board of Physicians
18 that the most likely cause for performance not being
19 up to expectations was the influence of medication?

20 A Because that's the mechanism. But the end result is
21 her performance was not up to expectation. If she
22 were under the influence of the medication and her
23 performance was okay, there would be no need for an
24 extension.

25 Q Well, you would agree with me that her being under

the influence of medication was a health issue.

2 A That is a health issue, but that's not the reason why
3 her residency was extended.

4 Q At the time that you wrote that her performance was
5 not up to expectations, most likely cause was the
6 influence of medication, did you believe there was
7 any other cause for her performance not being up to
8 expectations?

9 MR. BIXENSTINE: You mean other
10 possible cause?

11 MR. GORDILLO: That's right.

12 A As I stated before, there are some individuals who
13 just don't have the capability to function as an
14 anesthesiologist.

15 Q On May 6, 2009, did you hold that belief about Doctor
16 Aronson?

17 MR. BIXENSTINE: That she was not
18 capable of functioning as an
19 anesthesiologist?

20 MR. GORDILLO: Right.

21 A What I stated at that point is that I thought that
22 she met the minimum requirements and that she was
23 competent to go out and practice on that day. That's
24 what I believed.

25 Q And on that day, May 6, 2009, did you believe that

1 the reason that Doctor Aronson had not been able to
2 demonstrate sufficient academic and clinical ability
3 to qualify for advancement without conditional or
4 probationary status to the next year and next
5 progressive level of responsibility was because she
6 was unable to multitask?

7 MR. BIXENSTINE: Could you read that
8 back?

9 MR. GORDILLO: Just to be clear, I
10 took that language right from Question
11 Number 8.

12 MR. BIXENSTINE: That's what I was
13 looking for. So go ahead.

14 MR. GORDILLO: Go ahead.
15 - - - -

16 (Thereupon, record read by Notary.)
17 - - - -

18 A Yes.

19 Q Ann you're belief that she was unable to multitask is
20 distinguished from your belief that she had been
21 under the influence of medication; is that correct?

22 A Could you repeat that, please?

23 Q Yes. Do you think that her ability to -- inability
24 to multitask is different than her performance being
25 under the influence of medication?

1 A Is it different? I'm not sure I know how to answer
2 that question.

3 Q What I'm getting at is, as I understood your prior
4 testimony about possible causes, okay, for her
5 performance not being up to expectation, one was she
6 was under the influence of medication and a different
7 possible cause was that she just didn't have the
8 ability to multitask.

9 A Correct.

10 Q So I want to know whether the inability to multitask
11 is difference than being under the influence of
12 medication in that context.

13 A Yes.

14 Q So when you answered the question, Number 8, about
15 whether Doctor Aronson had demonstrated sufficient
16 academic and clinical ability to qualify for
17 advancement without conditional or probationary
18 status to the next year and next progressive level of
19 responsibility and your answer to that question was
20 no, did you believe that was because she was unable
21 to multitask as distinct from being under the
22 influence of medication?

23 A I think it was a combination of the two.

24 Q Why didn't you say that when you filled out the
25 response to the Maryland Board of Physicians?

1 A I don't know. At that time, that's probably what I
2 believed.

3 Q At what time, May 6th?

4 A Yes.

5 Q When you say that was probably what you believed,
6 what do you mean by that?

7 A What I wrote is what I believed at the time.

8 Q You believed that what you wrote was a complete
9 answer to those questions, 6 and 8?

10 A Yes.

11 Q So you believed that it was not necessary to indicate
12 that she was unable to multitask?

13 A Correct. They didn't ask for a specific reason.

14 Q Before you knew that Doctor Aronson was taking
15 Topamax, you had concerns about her ability to
16 multitask, correct?

17 A Correct. Although my concerns were mostly about her
18 response times.

19 Q Look please at Exhibit 40, and the second page of
20 Exhibit 40 that you filled out on September 2nd of
21 2008, you had informed Sheridan Healthcare in Florida
22 that one of the areas Doctor Aronson needed to
23 improve upon was multitasking, right?

24 A Correct.

25 Q By May 6th of 2009, you had learned that she had been

1 taking Topamax. You had learned that she had been
2 evaluated by UHCMC's Employee Assistance Program.
3 You had learned that her performance had improved
4 after you believe she stopped taking the Topamax, and
5 then completed a response to the Maryland Board of
6 Physicians in which you gave no indication that
7 multitasking might have been a cause for continuing
8 her residency program; isn't that true?

9 A That's true.

10 Q Did you discuss with Doctor Weiss during that first
11 conversation how you believe Doctor Aronson's taking
12 Topamax may have affected her performance?

13 A I'm pretty sure we discussed it. I don't remember
14 the details.

15 Q You said that you relayed to him what was reflected
16 on the ABA Report; is that correct?

17 A Yes.

18 Q And in the ABA Report, did you indicate that Doctor
19 Aronson had failed to carry out her professional
20 responsibility of notifying you that she was taking a
21 prescribed medication that could impair her judgement
22 and her job performance?

23 A I think we discussed that, but it wasn't a major
24 point.

25 Q And you can look at Exhibit 1 again, if you'd like

1 to, to refresh your memory, because that's
2 essentially what you wrote in that second paragraph.

3 A Yes.

4 Q And so my question is whether you discussed this
5 specific issue about her not reporting the prescribed
6 medication to you. Did you discuss that specific
7 issue with Doctor Weiss?

8 A I believe we did.

9 Q And did you discuss that it was Topamax?

10 A I don't know if I told him what the medication was.

11 Q Did you discuss your belief that the medication
12 caused her performance to be below expectations?

13 A I told him that that's what we had suspected.

14 Q Did you tell him that she had gone to EAP for
15 evaluation?

16 A I don't know if I was that specific. I don't
17 remember.

18 Q Do you remember whether you told him that EAP had,
19 you know, cleared her to return to work?

20 A I believe I told him that she was fit for duty.

21 Q You told him she had undergone a fitness-for-duty
22 examination?

23 A I don't remember exactly, but I do remember
24 discussing the fact that she was fit for duty. And
25 most likely, I would have mentioned that in the

1 conversation. I mean, it was a fact, so there was no
2 reason to not mention it, I guess.

3 Q What else do you recall about that first conversation
4 with Doctor Weiss?

5 A He said, can I call you back at another time and
6 discuss this?

7 Q Okay. Anything else?

8 A No. I think we covered everything.

9 Q And then he did call you back?

10 A Correct.

11 Q Or at least the two of you spoke again with another
12 physician from Sheridan on the line?

13 A Correct.

14 Q How long after the first conversation did the second
15 conversation occur?

16 A It was a few days.

17 Q Okay. And what do you recall about that second
18 conversation?

19 A They were concerned about credentialing her and they
20 wanted to know if there was anything that we could do
21 to make them more comfortable about her level of
22 performance, and my suggestion was to get more
23 evaluations from other individuals.

24 Q What else did you talk about, if anything?

25 A I remember it being a longer conversation than the

1 first one, and I think they asked me some specific
2 examples about her performance. I don't believe the
3 professionalism issue was a major focus at that
4 second conversation.

5 At this point, I can't remember anything else,
6 but if it comes to me, I'll let you know.

7 Q You said they asked you about specific examples
8 regarding her performance.

9 A Yes.

10 Q Did you give them any?

11 A I told them my concerns about her ability to respond
12 rapidly in times of stress and her ability to
13 multitask. I may have not used that word, but it was
14 the gist of my concerns. And they did ask me if
15 there were other faculty that had concerns, and I
16 told them, yes, there were several faculty members
17 who had concerns about her ability to function and
18 whether or not she was ready to graduate, whether or
19 not she had improved significantly over the course of
20 her residency, those kinds of things.

21 Q Did you tell them that she had shown you that she was
22 able to appropriately respond?

23 A I believe I told them that there was some noticeable
24 improvement after the Topamax had been stopped.

25 Q When they asked you whether others shared your

1 concerns, did you discuss whether any of those
2 concerns existed after she stopped the Topamax?

3 A I don't remember.

4 Q Did they ask you whether you would hire her?

5 A I don't believe they asked me that in the
6 conversation.

7 Q Did you offer any specific opinions to them about
8 whether they should hire her?

9 A I suggested that if they had any concerns, to hire
10 her as a -- for a probationary period and could see
11 for themselves if she met expectations, if she could
12 function.

13 I wanted Doctor Aronson to get that job.

14 Q Well, if you wanted her to get the job, what
15 prevented you from saying, yes, a health issue caused
16 her performance problems?

17 A In essence, that's what was stated. I don't know
18 what she told them. I don't know if she said it was
19 exclusively a health issue and that my response was
20 contrary to that, because I had stated that it was a
21 performance issue most likely related to the Topamax.
22 I don't know.

23 Q In filling out the evaluation form for Sheridan, why
24 did you provide information different than what you
25 provided to the Maryland Board of Physicians in terms

1. _____ of reasons or concerns about the performance?

2 A I don't think it's different.

3 Q Well, in the Exhibit 43, you didn't indicate anything
4 about professionalism as an issue, right?

5 A No, I did not.

6 Q But in response to Sheridan's inquiry, you did
7 indicate professionalism as one of the concerns,
8 right?

9 A I believe so.

10 Q Why?

11 A Because that was consistent with the report I gave to
12 the ABA.

13 Q Why didn't you report to the Maryland Board of
14 Physicians consistent with the report you gave to the
15 ABA?

16 MR. BIXENSTINE: Objection.

17 A Because they didn't ask the same question.

18 Q How were the questions different?

19 A It says: Did the applicant demonstrate sufficient
20 academic and clinical ability to qualify for
21 advancement without condition or probationary status?
22 So I addressed her clinical ability, not her
23 professional ability.

24 If they would have asked me, are there any
25 professional issues? Then I probably would have

1 included it.

2 Q Other than these two conversations that you mentioned
3 and the Exhibit 43, did you provide any
4 communications in connection with Doctor Aronson's
5 trying to get the job with Peninsula?

6 A No. That was it.

7 Q In the second conversation with Sheridan, you
8 suggested that they might be able to get more
9 evaluations of Doctor Aronson. Are you talking about
10 the evaluations of faculty to UH?

11 A Yes, I believe.

12 Q Did you tell them that there were going to be
13 positive evaluations available?

14 A I didn't tell them what to expect.

15 Q Why not? I mean, if you wanted to have her get the
16 job, why didn't you say, she's got positive
17 evaluations that you can get to see?

18 A I don't know why I did not express it in those terms.
19 I thought by suggesting that they get more
20 evaluations, that would prompt them to move in that
21 direction.

22 Q Before you spoke with Doctor Weiss, did you know who
23 Doctor Weiss was?

24 A No.

25 Q That's the first time you had communication with

1 Doctor Weiss?

2 A I believe so.

3 Q During the second conversation, you mentioned that
4 Sheridan shared with you that they were concerned
5 about credentialing Doctor Aronson, right?

6 A Mm-hmm.

7 Q What did they tell you -- what did they tell you
8 specifically in connection with their being concerned
9 about credentialing her?

10 A That there was a discrepancy between what she had
11 told them and what I had told them.

12 Q Okay. So in the second conversation, Sheridan was
13 telling you that because of a discrepancy between
14 what she told you and what you told them, they had
15 concerns about whether they were going to be able to
16 get her credentialed; is that accurate?

17 MR. BIXENSTINE: I think you meant
18 what she told them and what you told
19 them.

20 MR. GORDILLO: Yes. I'm sorry if I
21 misspoke.

22 A I believe so.

23 Q Did they tell you anything else about concerns they
24 had regarding her credentialing?

25 A I don't think so.

1 Q Did you make any effort during either the first or
2 the second conversation you had to help resolve
3 favorably to Doctor Aronson the concerns that
4 Sheridan was having about a perceived inconsistency
5 between what she had told them and what you had told
6 them?

7 A I believe I demonstrated that by cooperating with
8 them during the conversation and coming up with some
9 suggestions.

10 Q Well, you would agree with me you could cooperate and
11 come up with suggests that would help them to
12 unfavorably resolve that concern, right?

13 A No. Not unfavorably.

14 Q Well, my point is that cooperating with Sheridan
15 alone isn't going to determine or even influence how
16 that concern would be resolved, is it?

17 A I suppose if they didn't like what I was saying or
18 they didn't trust what I was saying, they wouldn't
19 have ultimately credentialed her.

20 Q Did you make any attempt to provide them with
21 objective or subjective information that would assist
22 them in resolving their concern about the perceived
23 inconsistency favorable to Doctor Aronson?

24 MR. BIXENSTINE: Besides what he
25 told you already?

1 MR. GORDILLO: Yes.

2 A I don't believe so.

3 Q And you made no attempt to try to explain how the two
4 responses might be consistent; is that accurate?

5 A No. That's not accurate. In our discussions, we
6 went over the differences. Even though we discussed
7 them, it didn't change the fact that they were
8 different.

9 Q So did you then confirm for them that the answers
10 were inconsistent?

11 A No.

12 MR. GORDILLO: Would you please read
13 back his answer before this one?

14 - - - -

15 (Thereupon, question read by Notary.)

16 - - - -

17 Q (By Mr. Gordillo) By the time you were having the
18 conversation with Sheridan, you had most likely
19 graduated Doctor Aronson from your program, right?

20 A Correct.

21 Q And the graduation signifies your assessment and the
22 program's assessment that Doctor Aronson was
23 competent to practice independently as an
24 anesthesiologist, correct?

25 A Correct.

1 Q And did you understand that Sheridan was contacting
2 you with concerns about whether that was accurate?

3 A Correct.

4 Q And can you describe for me anything you said
5 specifically in your two conversations with Sheridan
6 that would have bolstered your opinion that Doctor
7 Aronson was competent to practice independently?

8 MR. BIXENSTINE: Objection.

9 A No.

10 Q In the middle of October, October 14, 2008, is it
11 fair to say you did not believe that Doctor Aronson
12 was yet competent to practice independently?

13 A Correct.

14 Q Did you believe that her performance deficiencies
15 would be a public safety threat at that point?

16 A Yes.

17 Q Why didn't you remove her from the ICU rotation?

18 A She needed to complete a certain number of months in
19 the ICU to meet ACGME requirements. That could have
20 been one of the reasons. The other one is that even
21 though she was performing below expectations, there
22 are other individuals who are supervising her that
23 could help in case she needed assistance in managing
24 any patients.

25 Q After the time that you had communications with

1 Sheridan Healthcorp in Maryland, did you learn that
2 Doctor Aronson subsequently sought employment with
3 the Hamot Group in Pennsylvania?

4 A Yes.

5 Q And did you have any communication with anyone in
6 connection with the Hamot Group employment?

7 A Yes.

8 Q Tell me about that communication.

9 A They called me in response to an evaluation that I
10 sent them and wanted more information.

11 Q Who called you?

12 A I knew you were going to ask me that.

13 It was an administrator, but it wasn't a
14 physician. It was a female. I talked to her
15 briefly. Then she asked me if I would talk to the
16 chairman, or whoever was in charge of that
17 department, and I can't remember either one of those
18 names. If you have that information, I can confirm
19 it if I read it.

20 Q Did you speak with the department chair?

21 A Yes, I did.

22 Q How many times did you speak with the department
23 chair?

24 A I believe twice.

25 Q Other than the brief conversation with the

1 administrator and the two conversations with the
2 department chair, did you have any communication with
3 Hamot about Doctor Aronson's employment there?

4 A No.

5 Q What did the administrator tell you about the purpose
6 for her call?

7 A They wanted some clarification about what was in the
8 reference form.

9 Q Did they tell you specifically what they wanted
10 clarified?

11 A I'm sure they did. If I had a copy of the form, I
12 could probably recall. I don't remember. I remember
13 that it was -- the conversation was insufficient for
14 her, that's why she requested me to talk to the
15 chairman.

16 Q How long after you spoke with the administrator did
17 you speak with the chairman?

18 A Well, it was just a couple minutes. She put me on
19 hold and --

20 Q And tell me about the conversation -- that first
21 conversation with the chairman.

22 A He asked me what my opinion was or what -- he asked
23 me to clarify something I wrote in the evaluation.

24 Q Do you recall what you told him?

25 A I told him that -- confirmed that Doctor Aronson was

1 a resident in our program and that she had met all
2 the requirements for graduation, that her residency
3 was extended by six months, and I believe that was
4 it.

5 Q Did he ask you why her residency had been extended by
6 six months?

7 A Yes.

8 Q What did you tell him?

9 A I told him because of performance issues.

10 Q Did he ask you what those performance issues were?

11 A I believe so.

12 Q What did you tell him that they were?

13 A Her inability to respond appropriately and rapidly in
14 times of stress.

15 Q Anything else?

16 A Not that I can remember.

17 Q Did you discuss concerns about her professionalism?

18 A I don't think he asked me about professionalism. I
19 think he wanted to focus in on her clinical ability.

20 Q Did you discuss anything about her health?

21 A I can't remember if the Topamax issue came up
22 specifically. I believe I told him that she was on a
23 medication and we thought that it might have impaired
24 her cognitive function and we extended her residency
25 so that we could witness some improvement and then

1 graduate her. There some HIPAA issues I have to
2 dance around when you're talking about healthcare
3 issues with others, so I have to respect some of her
4 rights, as well.

5 Q Well, you knew she waived everything in terms of your
6 right to share information, right?

7 A I suppose so, yes. She probably did sign the waiver.

8 Q So you weren't really concerned about HIPAA, were
9 you?

10 A Yes, I was.

11 Q Even though you knew that she had given you a waiver?

12 A I recognize that now. I'm not sure I recognized that
13 she had signed a waiver, and that's what I meant at
14 the time. So I didn't think that the name of the
15 drug was as important as the fact that she was on the
16 medication and we stopped it to see what the response
17 would be.

18 Q And did you discuss any specific examples of Doctor
19 Aronson being unable to respond appropriately?

20 A I don't recall.

21 Q What else did you discuss with the department chair
22 during that first conversation?

23 A He asked me if there was a lawsuit.

24 Q And what did you tell him about that?

25 A I said yes.

1 Q Did you discuss anything about the details of the
2 lawsuit?

3 A No, I did not.

4 Q So he asked you if there was a lawsuit. You said
5 yes. That was the end of the conversation about the
6 lawsuit?

7 A He said, I will find out for myself.

8 Q Okay. What else did you discuss in that first
9 conversation with the department chair?

10 A I think that's about it; performance issue and the
11 lawsuit issue.

12 Q During that first conversation, did the department
13 chair give you some indication that there might be a
14 follow-up conversation?

15 A No.

16 Q You said there were two conversations, though, right?

17 A Yes.

18 Q How long after the first conversation did the second
19 conversation occur?

20 A Again, probably a few days to a week.

21 Q Before the first conversation occurred, did you
22 confer with anyone, excluding legal counsel, about
23 how you would respond to employment inquiries
24 regarding Doctor Aronson?

25 A No. Only discussed that with legal counsel.

1 Q Okay. And I should have asked, but with respect to
2 your responses to Sheridan Healthcorp, the Maryland
3 job, did you discuss how to respond to those
4 inquiries with anyone other than legal counsel?

5 A Probably Doctor Nearman.

6 Q Right. And I think you testified in terms of
7 providing the information to the Maryland Board of
8 Physicians, you talked to Doctor Nearman?

9 A Yes.

10 Q I'm talking specifically now with respect to Sheridan
11 as apart from the Board of Physicians, did you
12 discuss how you would respond with Doctor Nearman?

13 A No. I think I discussed the conversation after.

14 Q And what did Doctor Nearman say to you during that
15 conversation?

16 A I don't remember.

17 Q We've been talking about this conversation with the
18 department chair at Hamot, right?

19 A Correct.

20 Q That was the Chair of Anesthesia?

21 A Yes.

22 Q Doctor Simon? If I give you a name, does that ring a
23 bell?

24 A That name is familiar from the past.

25 Q Okay.

1 A Is it S-y-m-o-n?

2 Q S-i-m-o-n.

3 A That name sounds familiar, but I'm not sure.

4 Q And the two conversations you had was with the same
5 person, right?

6 A Correct.

7 Q Is it accurate to say that you did not have the
8 understanding that the person you were speaking to
9 was chair of the Credentialing Committee at Hamot?

10 A I don't think -- I was not under the impression that
11 this person was the chairman of the Credentialing
12 Committee.

13 Q Tell me about the second conversation that you had.

14 A It was very brief.

15 Q Okay.

16 A He called and told me that he had confirmed that
17 there was a lawsuit and he was aware of the nature of
18 the lawsuit. He obtained it through some public
19 forum -- I'm not sure -- and that he wouldn't be
20 contacting me anymore.

21 Q And that's all he said?

22 A That's all he said.

23 Q So during the first conversation -- when the first
24 conversation ended, did you have any reason to expect
25 follow-up contact from the department chair?

1 A No.

2 Q Is it fair to characterize the second call as one of
3 out of the blue, to you?

4 A Was I surprised that he called me?

5 Q Yes.

6 A Yes.

7 Q And the only thing he said, was we confirmed the
8 lawsuit and we're not going to contact you again?

9 A Yes.

10 Q Do you have any thought about why that call would
11 have been made?

12 MR. BIXENSTINE: Objection. Go

13 ahead.

14 A Only because he told me at the end of the first
15 conversation that he would look into the possible
16 legal action that was going on at the time.

17 Q During the second conversation, he didn't ask you any
18 questions about your thoughts about the lawsuit?

19 A No. It was very brief.

20 Q When you completed the evaluation form for Hamot, did
21 you believe that it might cause delay in Doctor
22 Aronson getting credentialed for the Hamot job?

23 A Based on the nature of this business that I'm in, I
24 believe that it probably would have raised some
25 eyebrows on the other side.

1 Q Is the same thing true of the evaluation form you
2 completed for Sheridan and the Maryland job that
3 Doctor Aronson was seeking?

4 A Most likely.

5 Q Since applying for the job at Hamot, Doctor Aronson
6 has continued to apply for other jobs. Were you
7 aware of that?

8 A Yes, sir.

9 Q Are you currently involved in providing any
10 information regarding Doctor Aronson's residency to
11 prospective employees for her?

12 A No, I'm not.

13 Q Is the last time you provided information regarding
14 Doctor Aronson's residency the communications you had
15 with Hamot?

16 A No.

17 Q Since those communications with Hamot, to whom have
18 you communicated in terms of prospective employers
19 about Doctor Aronson's residency?

20 A I filled out an evaluation form about a month and a
21 half ago, and I don't remember who it was from. It
22 was five brief questions. They were all factual
23 information. They were yes and no answers that
24 required no explanation, and that was the last and
25 only evaluation that I filled out since she applied

1 for Hamot.

2 Q So other than that one evaluation, you have not
3 provided any communications to any prospective
4 employers regarding Doctor Aronson?

5 A That's correct.

6 MR. GORDILLO: This is probably as
7 good a place as any to break if we want a
8 lunch break.

9 MR. BIXENSTINE: Okay.

10 - - - -

11 (Thereupon, recess was had.)

12 - - - -

13 MR. GORDILLO: Back on the record.

14 Would you read the last question
15 and answer, please?

16 - - - -

17 (Thereupon, question read by Notary.)

18 - - - -

19 Q (By Mr. Gordillo) I want to talk to you again about
20 the November 24th meeting in 2008 with you and Doctor
21 Wallace and Doctor Aronson. At that meeting, the
22 three of you discussed having Doctor Aronson undergo
23 evaluation by Employee Assistance, right?

24 A Correct.

25 Q The referral of Doctor Aronson was a mandatory Tier 1

1 referral. Are you familiar with that?

2 A Yes.

3 Q You did not make the referral?

4 A No, I did not.

5 Q It was Doctor Wallace?

6 A Correct.

7 Q He did not make that referral on November 24th,
8 right?

9 A I believe it was the next day.

10 Q Did he discuss that referral with you after the
11 November 24th meeting?

12 A Not immediately.

13 Q Did he tell you about it before he made the referral?

14 A Yes.

15 Q When did he tell you?

16 A We discussed it right after the meeting with Doctor
17 Aronson.

18 Q Okay. And the two of you had not decided during the
19 meeting that you were going to make a mandatory
20 referral; is that correct? The two of you being you
21 and Doctor Wallace.

22 A I believe at the meeting we discussed EAP evaluation,
23 and in my mind, that meant that we were going to make
24 a referral. So I was satisfied leaving that meeting
25 that that's what was going to happen.

1 Q And leaving that meeting, did you believe that Doctor
2 Aronson was going to be removed from service for that
3 referral?

4 A Yes. That was my expectation. That was part of the
5 process.

6 Q Did you know that Doctor Wallace was going to make
7 the referral on November 25th?

8 A I believe he told me after the meeting that he was
9 going to make it the next day.

10 Q Did the two of you discuss whether he should make the
11 referral or you should make the referral?

12 A No. He always made the referrals when those
13 situations arose.

14 Q Why?

15 A That was unofficially designated his duties as
16 co-director.

17 Q When did you learn that he had in fact made the
18 referral?

19 A I think when I came back to work after Thanksgiving.

20 Q The referral was made before Thanksgiving?

21 A Correct.

22 Q Did you have a conversation with Doctor Aronson in
23 which you told her that you didn't know that she had
24 been removed from service?

25 A I believe I had a conversation with her sometime

1 after that. I knew she had been relieved from
2 service because of the evaluation. I didn't know
3 what the effective date was. I believe I was on
4 vacation that week.

5 Q So you learned about her actual removal from service
6 after you returned from vacation?

7 A I believe so. That was the week of Thanksgiving.

8 Q And you may have informed her of that, that you
9 didn't learn about her actual removal, until you
10 returned from vacation?

11 A That's possible.

12 Q And the decision to have her referred to EAP was made
13 by whom?

14 A By the three of us.

15 Q You were in agreement with that decision?

16 A Yes.

17 Q Why did you think it was a good idea to have her
18 referred to EAP?

19 A It's almost part of standard process. If you have a
20 reason to believe someone is not fit for duty, you
21 want them to be evaluated and you want a confirmation
22 that they are fit for duty, and since we had a reason
23 to believe that there was a cause, in other words the
24 Topamax, it was reasonable at that time to have her
25 evaluated.

1 Q Okay. And she was evaluated, right?

2 A I believe so, yes.

3 Q And the evaluation was to see whether she was fit for
4 duty, right?

5 A Correct.

6 Q And at the conclusion of that evaluation, EAP
7 released her to return to work, right?

8 A Yes.

9 Q In other words, EAP's evaluation of whether she was
10 fit for duty came back with an answer of yes, she was
11 fit for duty, correct?

12 A Correct.

13 Q What's your understand of what fit for duty means?

14 MR. GORDILLO: Off the record.

15 - - - -

16 (Thereupon, a recess was had.)

17 - - - -

18 MR. GORDILLO: Would you read back
19 the last question?

20 - - - -

21 (Thereupon, record read by Notary.)

22 - - - -

23 A My understanding is that if there are no discernible
24 causes to impair an individual's ability to work or
25 train, then they are fit for duty.

1 Q And so when EAP released Doctor Aronson to go back to
2 work, did you believe that there were no apparent
3 causes to impair her ability?

4 A Yes. Correct.

5 Q And she was referred to EAP because you believe there
6 might be a cause that was impairing her ability, fair
7 enough?

8 A Fair enough.

9 Q In early December or late November of 2008, you gave
10 a letter of recommendation to the Florida License
11 Board regarding Doctor Aronson. Do you recall that?

12 A I believe I did.

13 Q And do you recall whether it was a positive letter of
14 recommendation?

15 A I do not. I don't remember the details.

16 MR. BIXENSTINE: What time did you
17 say it was?

18 MR. GORDILLO: Late November/early
19 December.

20 - - - -

21 (Thereupon, Exhibit 44 was marked for the purpose of
22 identification.)

23 - - - -

24 Q (By Mr. Gordillo) You've been handed a document
25 marked as Exhibit 44. Take all the time you'd like

1 . to look it over and let me know when you've had an
2 adequate opportunity to review it.

3 A Okay.

4 Q Do you recognize this document?

5 A Yes.

6 Q Can you tell me what it is, please?

7 A It's a series of emails messages; one from Doctor
8 Aronson to me and one from me to her in reply.

9 Q And this is emails about the letter you sent to the
10 Florida Licensing Board, right?

11 A Yes.

12 Q Indicating that you wrote and signed it the week
13 before December 8th?

14 A Yes.

15 Q And Kathi is someone who would have sent it out at
16 your direction?

17 A Kathi is my secretary, yes.

18 Q At the time you sent the letter out, you were not yet
19 aware of EAP's evaluation of Doctor Aronson; is that
20 true?

21 A Based on the timing, that would probably be true.

22 Q You knew she had been referred for evaluation but
23 didn't know how that evaluation was coming out; is
24 that fair?

25 A That's fair.

1 Q How did you learn that EAP had determined that Doctor
2 Aronson was fit for duty?

3 A I don't remember.

4 Q Were you given any details about the evaluation of
5 her?

6 A No.

7 Q Do you remember whether you learned from someone in
8 EAP directly that she was cleared for return to work?

9 A No. I did not hear from anyone from EAP. I made no
10 communication with them at all.

11 Q Was Doctor Wallace the primary contact with EAP in
12 connection with her fitness-for-duty evaluation?

13 A Yes.

14 Q Were you in communication with Doctor Wallace about
15 getting Doctor Aronson back into service after her
16 referral to EAP?

17 A Most likely.

18 Q Did you discuss with Doctor Wallace whether Doctor
19 Aronson's return to work was being delayed for any
20 unnecessary reasons?

21 A No.

22 Q Did you discuss whether her return to work was being
23 delayed for any necessary reasons?

24 A No.

25 Q Were you aware that she had been evaluated as being

1 fit for duty and then a delay occurred between the
2 time that she received that evaluation and the time
3 that she was able to return to work?

4 MR. BIXENSTINE: Objection.

5 A I believe I heard about that at the time, but I don't
6 remember the details.
7 - - - -

8 (Thereupon, Exhibit 45 was marked for the purpose of
9 identification.)
10 - - - -

11 Q (By Mr. Gordillo) All right. You've been handed a
12 document marked as Exhibit 45. As always, please
13 take all the time you'd like to look it over and let
14 me know when you've had an adequate opportunity to
15 review it.

16 A Okay.

17 Q Do you recognize the document?

18 A Yes. It's a series of email messages from Doctor
19 Aronson to Will Rebello to me back to her and then
20 back to me. This refreshes my memory of what you
21 just asked.

22 Q Okay. Great. And specifically about her having her
23 EAP evaluation completed in a time period between the
24 time that her evaluation was completed and the time
25 she returned to work, correct?

1 A Correct.

2 Q And on December 12th of 2008, she had written to
3 Mr. Rebello asking about a return to work, right?

4 A Yes.

5 Q On December 13th, she forwarded that message to you,
6 right?

7 A Correct.

8 Q And she's asking you for what her plan is regarding
9 her return to work, right?

10 A Correct.

11 Q The 13th was a Saturday. She's telling you she got
12 the report on the Tuesday before, correct?

13 A Right. Correct.

14 Q Now, she's particularly concerned about days that she
15 has left. She refers to to reach the 60 she was
16 allowed away from residency, correct?

17 A Correct.

18 Q And she was correct about the fact that she's only
19 allowed 60 days away from the residency, correct?

20 A Correct.

21 Q And the 60 days are calendar days, right?

22 A Yes.

23 Q In other words, they're not determined by work week
24 or schedules, it's just whatever the days are on the
25 calendar. Right?

1 A I believe so, my interpretation of what you're trying
2 to say.

3 Q I'm just getting at that there isn't -- every day of
4 a year counts as a day in the context of a residency,
5 right? And if you miss any day in the year --

6 A Any work day.

7 Q That's my question.

8 But the work days are taken from the 365 days of
9 the year, right?

10 A Correct.

11 Q So as a resident, you can be scheduled to work on any
12 one of those 365 days, right?

13 A Correct.

14 Q So is it reasonable for her to assume, as your
15 understanding as program director, that the issue
16 about returning to work is one that matters with each
17 day that passes?

18 A Correct.

19 Q You did not -- she sent you an email in the morning
20 of Saturday December 13th, correct?

21 A Correct.

22 Q Why did you wait until Monday, 12:33 to respond?

23 A That's probably when I got back to work. I didn't
24 have my Blackberry then.

25 Q And then your response to her is: We'll discuss this

1 with Dave when all the information is together, this
2 week I hope, right?

3 A Correct.

4 Q Dave is Doctor Wallace, right?

5 A Correct.

6 Q What was it specifically that you had to discuss with
7 Doctor Wallace about returning Doctor Aronson to work
8 at this point, December 15th?

9 A If he had gotten information from EAP that said it
10 was time for her to return to work. Just because the
11 evaluation is over, the EAP evaluation is over,
12 doesn't mean we instantly get a letter or document
13 that says she's fit to go back to work.

14 I just recently learned that in a situation we
15 had a few months ago with another resident.

16 Q All right. But as of December 15, 2008, what was
17 your concern that you had to discuss with Dave?

18 A That we had documentation from the EAP that said she
19 was ready to return to work.

20 Q Okay.

21 A In her letter she says: I got the final report from
22 my evaluation on Tuesday. But I don't know if
23 Dave -- Doctor Wallace -- received information from
24 EAP that stated that even though the evaluation was
25 complete, was she ready to go back to work. There's

1 usually a few day's delay. I have found out recently
2 when that occurs.

3 Q Is there anything that prevented you from contacting
4 EAP directly?

5 A Once the resident is referred to EAP, we are not
6 supposed to have any contact with them or with the
7 resident, is my understanding.

8 Q Well, somebody had to have contact with EAP to get
9 the evaluation that was going to release her to work,
10 right?

11 A The EAP has to contact us.

12 Q Are you saying you cannot initiate contact with EAP?

13 A That was my belief, yes, and it still is. When the
14 resident is under their care or their evaluation, we
15 are not to interfere, and they will let us know when
16 their evaluation is complete and when she can return
17 back to work.

18 Q Just so I'm clear, Doctor Aronson informed you as of
19 December 13th she believed she completed the
20 evaluation, and you understood that she wanted to get
21 back to work, right?

22 A Of course.

23 Q And your belief is that it's the policy of the
24 program to prevent you from following up with EAP at
25 the request of the person referred to EAP so that

1 person can go back to work; is that right?

2 A That's correct.

3 Q Did you respond to the top email that is on Exhibit
4 45 that Doctor Aronson sent to you December 15th?

5 A I don't remember.

6 Q Did you in fact discuss her EAP evaluation and return
7 to work with Doctor Wallace as you indicated in your
8 email of December 15th?

9 A I believe I did, but I don't remember the details of
10 the conversation.

11 Q Before the November 24th meeting, did it occur to you
12 that Doctor Aronson should be referred to EAP?

13 A No.

14 Q What happened during the November 24th meeting that
15 caused you to believe that she should be referred to
16 EAP?

17 A She disclosed the information about the Topamax.

18 Q And so is it fair to say that before she told you
19 about Topamax, she had not exhibited any symptoms
20 that suggested to you that she should be referred to
21 EAP?

22 A I had not considered it before then.

23 Q Is your answer to my question yes?

24 A Yes.

25 Q After Doctor Aronson was removed for a

1 fitness-for-duty examination -- removed from service
2 for a fitness-for-duty examination -- she had
3 informed you that she was surprised by that decision;
4 isn't that true?

5 A I don't remember.

6 Q Did you learn that she had disagreed with the
7 decision to remove her from clinical service?

8 A My recollection of that meeting is that she agreed to
9 that, maybe reluctantly, but she agreed to it. And
10 we were all under the impression that if EAP was
11 consulted, she would most likely be taken off of
12 service.

13 Q You have a specific recollection of the conversation
14 on the November 24th meeting that Doctor Aronson
15 could expect to be removed from service if there was
16 an EAP referral?

17 A I know we had that conversation.

18 - - - -

19 (Thereupon, Exhibit 46 was marked for the purpose of
20 identification.)

21 - - - -

22 Q (By Mr. Gordillo) You've been handed a document
23 marked as Exhibit 46. Please take all the time you'd
24 like to look it over and let me know when you've had
25 an adequate opportunity to review it.